

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

JANUARY 20, 2004

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, January 20, 2004 at 8:30 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting called to order at 8:30 a.m. by Chairman Arthur Slattery

Present: Commissioners Arthur Slattery, Pauline Ikawa, Nancy LeRoy, Barbara Heath, Robert Stephen, Executive Director Beth Emmons, and Investigator Ann Flanagan.

- I. Motion by Commissioner Heath, seconded by Commissioner LeRoy, to approve and accept the minutes of the Commission meeting held on November 18, 2003.

II. **APPOINTMENTS**

8:30 a.m. - Equivalency Interviews

The following candidates were interviewed by the Commission present and voting:

CANDIDATE

DETERMINATION

ROBERT DUTTON

DENIED

A motion was made by Commissioner LeRoy to approved Mr. Dutton, and seconded by Commissioner Heath. Commissioners Slattery, Stephen and Ikawa voted in opposition.

FARIDEH NAMAZI

APPROVED

On motion by Commissioner LeRoy, seconded by Commissioner Heath, the Commission, present and voting approved Ms. Namazi based on her intention to take a 40 pre-licensing course, in addition to her 60 hour broker education qualifications. Commissioner Stephen was recused and did not take part in the decision.

LEE STRIMBECK

DENIED

On motion by Commissioner Heath, seconded by Commissioner LeRoy, the Commission unanimously denied Mr. Strimbeck's experience to satisfy the experience requirement towards a broker's license.

The following candidate was interviewed by Commissioner Slattery:

ROBERT ANTHONYSON

APPROVED

The following candidate was interviewed by Commissioners Stephen and Ikawa:

VALLERY FRANCIS APPROVED

The following candidate was interviewed by Commissioners LeRoy and Heath:

DANIEL BURKE APPROVED

9:25 a.m. – CLEMENT ST. HILAIRE appeared before the Commission to address his non-compliance with disciplinary actions issued to him by the Commission through an Order for File No. 2002-09-02. According to the Order, Mr. St. Hilaire's broker license is in suspension until he complies with the disciplinary actions of the Order. Mr. St. Hilaire attempted to renew his broker license in an active status, but until Mr. St. Hilaire complies with his outstanding disciplinary actions, his license will remain in suspension. Mr. St. Hilaire disagrees with the disciplinary action issued, and does not feel he should comply. Mr. St. Hilaire submitted a Request for a Prehearing Conference regarding his license renewal and the outstanding disciplinary actions. The Commission informed Mr. St. Hilaire that it's decision in File No. 2002-09-02 stands and that the Commission will review the Request for a Prehearing Conference. The Commission will review the Request, and if the Commission feels that there are any outstanding issues pursuant to Rea 205.07, to address in a Prehearing Conference, the Commission will schedule the Prehearing conference with Mr. St. Hilaire.

9:45 a.m. – MELISSA MARTIN appeared before the Commission to explain a "yes" answer to question #4 on her salesperson's application. After review and discussion, and on motion by Commissioner Stephen, seconded by Commission LeRoy, the Commission unanimously voted to allow Ms. Martin to renew her salesperson's license.

9:55 a.m. – WILLIAM WEIDACHER of Carlson GMAC Real Estate, and Matt Johnson, legal counsel for Carlson GMAC Real Estate appeared before the Commission to discuss the company's proposed modifications of it's Agency forms and policies. The intent of the discussion was not to have the Commission to make any decisions or rulings, but to receive any feedback before finalizing its agency policies. Matt Johnson explained to the Commission that the substance of the forms are not changing and that consensual disclosed dual agency is what Carlson GMAC continues to practice. The only goal to the changes of the forms was to provide better detail and disclosure to the consumer on exactly what the roles and responsibilities of the individual agent are, while practicing dual agency with the consent of the consumer. The changes to the forms and policies are an effort to provide better customer service by allowing the customer to retain the initial advocate that they had to continue to help them in the real estate transaction process. Another important change to the forms was the steps taken to ensure that all information remains confidential and there is no sharing of information.

The Commission did not fully review the company's forms and policies and did not make a decision or an opinion on the substance of the forms, but stated that as long as Carlson GMAC Real Estate was operating in accordance with RSA 331-A and Administrative Rules Rea 100-700, and was not practicing a form of Agency which is not recognized under the law, such as Designated Agency, the Commission stated that they would not have any concerns with their forms and policies. The Commission's Investigator did note that there were some technical problems with their forms and will meet with representatives from Carlson GMAC to discuss the issues.

10:37 a.m. – DONNA M. HUOT appeared before the Commission to explain a previous legal incident prior to applying for a salesperson's license. After review and discussion, and on a motion by Commissioner LeRoy, seconded by Commissioner Stephen, the Commission voted to allow Ms. Huot to apply for her salesperson's application; based on the fact the Ms. Huot has had no further legal incidents for the past 11 years. Commissioner Ikawa voted in opposition.

DISCUSSION

FILE NO. 2003-03-04 – The Respondent, through counsel, submitted a rejection to the proposed Settlement Agreement offered by the Commission for File No. 2003-03-04, and submitted a Motion to Dismiss the Complaint. After review and discussion, the Commission voted to uphold it's original determination, that if the Respondent did not wish to enter into a Settlement Agreement, the complaint should be heard. The parties to the complaint to be notified that a hearing will be scheduled.

III. OTHER BUSINESS

1. Tuesday, February 17, 2004, was unanimously approved as the date for the next regular meeting.

2. CASE EVALUATIONS

(a) FILE NO. 2003-05-04

Evaluator: Commissioner Slattery

Determination: Should be heard, hearing to be scheduled.

The above determination was unanimously approved.

3. ORDERS

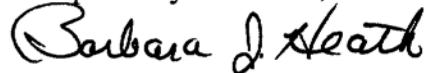
The following Order was approved by the Commission and becomes part of the official Minutes of this meeting.

FILE NO. 2001-05-03 JON R. CHAMBERLAIN & PATRICIA C. REYNOLDS V.
JACQUELINE NOSEWORTHY & LAURIE COFFIN

VI. ADJOURNMENT

Motion by Commissioner Ikawa, seconded by Commissioner LeRoy to adjourn the meeting. Chairman Slattery adjourned the meeting at 11:30 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barbara J. Heath". The signature is written in a cursive, flowing style.

Barbara J. Heath
Clerk

STATE OF NEW HAMPSHIRE

REAL ESTATE COMMISSION

JON R. CHAMBERLAIN & PATRICIA C. REYNOLDS

V.

JACQUELINE NOSEWORTHY & LAURIE COFFIN

FILE NO. 2001-05-03

This matter comes before the Real Estate Commission on the complaint of Jon R. Chamberlain & Patricia C. Reynolds, who allege violations of NH RSA 331-A:13; RSA 331-A:25-a; RSA 331-A:25-b, II(a); RSA 331-A:26, XXV, and New Hampshire Code of Administrative Rules Rea 701.02 by Jacqueline Noseworthy & Laurie Coffin. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Jacqueline Noseworthy (hereinafter referred to as Respondent Noseworthy) was licensed as a real estate salesperson on 6/21/83 and as a real estate broker on 01/12/96, and was so licensed and the principal broker of Noseworthy Real Estate at the time of the alleged violations.

2. Laurie Coffin (hereinafter referred to as Respondent Coffin) was licensed as a real estate salesperson on 12/20/83 and as a real estate broker on 11/01/99, and was so licensed as an associate broker under Jacqueline Noseworthy at the time of the alleged violations.

3. On 12/29/00, Jon R. Chamberlain & Patricia C. Reynolds (hereinafter referred to as Complainants) entered into a Purchase & Sales Agreement to purchase a property located at Beede Road Holderness, New Hampshire, with a closing date of 2/14/01. Respondent Noseworthy was the listing agent and Respondent Coffin was the selling agent.

4. Complainant Reynolds testified that they did not know about the drainage easements until the title search was done for the closing (Tr. p. 15, lines 4-5).

5. Complainant Reynolds testified that having a drainage easement controlled by the neighbor was not acceptable to them because it lacked definition and was too open ended (Tr. p. 15, lines 18-19; Tr. p. 44-45, lines 19-3).

6. Respondent Noseworthy testified that she knew from a previous transaction that Complainant Chamberlain did not like easements (Tr. p. 48, lines 18-22).

7. Respondent Noseworthy testified that the partial copy of the subdivision map furnished to Complainants from their listing packet did not indicate any easements (Tr. p. 64, lines 1-3).

8. Respondent Noseworthy testified that they did not keep an updated subdivision plan at their office because it kept disappearing three times, so they kept it at the property instead (Tr. p. 62, lines 10-14).

9. Respondent Coffin testified that the sellers disclosed the easements to Complainants when they walked the property, and when the sellers went over the subdivision map which Respondent had left on the kitchen table (Tr. p. 51, lines 9-11).

10. Respondent Noseworthy testified that Complainants should have asked them for a copy of the complete subdivision map which would have disclosed the easements, and then they would have provided it (Tr. p. 63, lines 4-10), and in her reply to the Form 11 complaint stated: "Why in God's name did they not ask for a copy of the plan to review with their attorney?"

11. Respondents testified that because they believed that the easements were not adverse to the value of the property that they were not required to disclose it, and that they believed the sellers acted properly by indicating that there were no easements on the property representation form (Tr. p. 53-54, lines 10-23, 1-17; p. 58, lines 10-22; p. 79-80, lines 23-16).

12. Respondent Coffin testified that the communications with Complainants regarding the drainage easements took place in March 2001 (Tr. p. 74, lines 6-13), which was after the closing date of 2/14/01.

13. Respondent Noseworthy testified she was leaving her business and going on vacation, and that she did not want the deposit in her escrow (Tr. p. 66, lines 18-20).

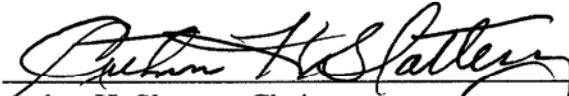
Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

Rea 701.02 requires licensees to disclose material conditions affecting the subject property to prospective buyers prior to an offer. Contrary to the Board of Realtors property representation form, this rule makes no reference to "adverse" conditions or the "value" of the property. Easements are always material conditions affecting the subject property, and as such, should always be disclosed. Respondents felt that they disclosed the easements by providing an opportunity for Complainants to meet with the sellers so that the sellers could disclose the easements to Complainants, and by leaving a copy of the complete map on the kitchen table. Respondents also indicated in testimony that although the partial copy of the subdivision map furnished to Complainants from their listing packet did not indicate any easements, that Complainants should have asked them for a copy of the subdivision map which would have disclosed the easements, and then they would have provided it. The Commission feels that Respondents were sloppy by not

disclosing the easements. Therefore, the Commission rules that Respondents did not violate Rea 701.02; RSA 331-A:25-a; RSA 331-A:25-b, II(a); or RSA 331-A:26, XXV.

Respondent Noseworthy indicated that she changed the venue of the deposit dispute from district court to superior court even though Complainants were in New Jersey because she wanted to get rid of it from her escrow account. Although unfortunately this added high legal costs to the dispute, it is not prohibited. Therefore, the Commission rules that Respondents did not violated RSA 331-A:13.

Commissioner Pauline Ikawa evaluated this case and did not take part in the hearing or decision.


Arthur H. Slattery, Chairperson

1/20/04
DATE


Robert S. Stephen, Commissioner

1/20/04
DATE


Nancy LeRoy, Commissioner

1/20/04
DATE